

Gregory N. Karasik (SBN 115834)
greg@karasiklawfirm.com
Karasik Law Firm
11835 W. Olympic Blvd., Ste. 1275
Los Angeles, California 90064
Tel: (310) 312-6800
Fax: (310) 943-2582

Alexander I. Dychter (SBN 234526)
alex@dychterlaw.com
Dychter Law Offices, APC
1010 Second Ave., Suite 1835
San Diego, California 92101
Tel: (619) 487-0777
Fax: (619) 330-1827

Attorneys for Plaintiff
DANIEL GOUNEV

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DANIEL GOUNEV, individually and
on behalf of others similarly situated,

Plaintiff,

vs.

DELTA MECHANICAL, INC.;
CALIFORNIA DELTA
MECHANICAL, INC. and DOES 1
through 10,

Defendants.

Case No. '13CV1857 JLS JMA

CLASS ACTION

**COMPLAINT FOR FLSA
COLLECTIVE ACTION AND RULE
23 CLASS ACTION**

1 Plaintiff Daniel Gounev ("Plaintiff"), on behalf himself and all others similarly
2 situated, complains and allege as follows:

3 INTRODUCTION

4 1. This case arises out of the fact that defendants Delta Mechanical, Inc. and
5 California Delta Mechanical, Inc. (jointly and severally referred to as "Delta
6 Mechanical") wrongly treat as "independent contractors," and fail to classify properly as
7 "employees," persons hired by Delta Mechanical to perform residential plumbing
8 installation services ("Installers"). On behalf of Installers employed by Delta
9 Mechanical throughout the United States, Plaintiff asserts a claim for failure to pay
10 overtime wages in violation of the Fair Labor Standards Act ("FLSA"). Plaintiff brings
11 this claim as a collective action pursuant to 29 U.S.C. 216(b). On behalf of Installers
12 employed by Delta Mechanical in California, who belong to the California Installers
13 Class, Wage Statement Subclass and/or Final Wages Subclass defined in paragraph 12
14 below, Plaintiff asserts claims under California law for failure to pay minimum wages,
15 failure to pay overtime wages, failure to provide meal periods, failure to provide rest
16 periods, failure to indemnify for business expenses, unfair competition, failure to
17 provide accurate wage statements, and/or failure to pay all wages upon termination.
18 Plaintiff brings his state law claims as a class action pursuant to Rule 23 of the Federal
19 Rules of Civil Procedure. Plaintiff seeks all damages, restitution, statutory penalties and
20 civil penalties to which he and similarly situated current or former employees of Delta
21 Mechanical are entitled under the FLSA and/or state law.

22 JURISDICTION

23 2. The Court has original jurisdiction over Plaintiff's claims under the FLSA,
24 a law of the United States, pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b). The
25 Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28
26 U.S.C. § 1367. The state law claims are so related to Plaintiff's claims under the FLSA
27 that they form part of the same case or controversy.

28 ///

VENUE

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Delta Mechanical does business and therefore resides in this district and/or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

THE PARTIES

A. Plaintiff

4. Plaintiff worked as an Installer for Delta Mechanical from approximately September or October 2008 to May 24, 2013. As an Installer, Plaintiff would deliver and/or install plumbing fixtures (i.e., water heaters, sinks, faucets, toilets, garbage disposals) at the residence of the customer who ordered the fixtures. He worked throughout the San Diego area and picked up plumbing fixtures supplied by Delta Mechanical at a warehouse facility maintained by Delta Mechanical in San Diego. Plaintiff typically worked six days per week and 8-9 hours per day. During his employment with Delta Mechanical, Plaintiff was treated as an independent contractor and paid flat amounts set by Delta Mechanical for each type of job (e.g., \$100 for a water heater install, \$40 for a garbage disposal install, \$40 for a faucet install, \$25 for a delivery). Because he was treated as an independent contractor and not treated as an employee, Delta Mechanical did not pay Plaintiff wages for all the hours he worked, Delta Mechanical did not pay Plaintiff overtime wages for any overtime hours worked, Delta Mechanical did not provide Plaintiff with meal periods, Delta Mechanical did not provide Plaintiff with rest periods, Delta Mechanical did not provide Plaintiff with wage statements, Delta Mechanical did not pay Plaintiff all the wages owed to him upon the termination of his employment, and Delta Mechanical did not reimburse Plaintiff for his work related mileage expenses. Although Delta Mechanical treated Plaintiff as an independent contractor, Plaintiff was actually an employee under federal law, California common law and/or applicable California Wage Orders because Delta Mechanical had the authority to exercise control over the manner and means of performing his work,

1 Delta Mechanical directly or indirectly exercised control over Plaintiff's wages, hours
2 or working conditions, and/or Plaintiff was an employee of Delta Mechanical as a
3 matter of "economic reality." The facts indicating that Plaintiff was an employee of
4 Delta Mechanical, and not an independent contractor, include the following: Plaintiff
5 performed work that was integral to Delta Mechanical's regular business; Delta
6 Mechanical supplied Plaintiff with the plumbing fixtures to be delivered or installed by
7 Plaintiff; Delta Mechanical reimbursed Plaintiff for additional materials needed by
8 Plaintiff to perform his job (such as extra pipe or solder for welding); Plaintiff's work
9 did not require a high degree of skill; Plaintiff had no opportunity for profit or loss
10 depending on any managerial skills; Plaintiff's livelihood was dependent upon the
11 business of Delta Mechanical; the type of work performed by Plaintiff required a
12 contractor's license, which was not held by Plaintiff but was held by Delta Mechanical;
13 Delta Mechanical provided Plaintiff with the truck needed by Plaintiff to perform his
14 job, which displayed advertising for Delta Mechanical; Delta Mechanical required
15 Plaintiff to carry an identification badge which identified Plaintiff as working for Delta
16 Mechanical; Delta Mechanical required Plaintiff to wear a shirt, provided by Delta
17 Mechanical, which identified Plaintiff as working for Delta Mechanical; Delta
18 Mechanical determined on what days Plaintiff would work; Delta Mechanical
19 determined at what time during the day Plaintiff would work; Delta Mechanical
20 determined the location where Plaintiff would work; Delta Mechanical determined what
21 job assignment Plaintiff would perform; Delta Mechanical required Plaintiff to check
22 the Delta Mechanical website to learn his job assignments; Plaintiff was required to
23 follow the directions of Delta Mechanical dispatchers with respect to new job
24 assignments or changes in job assignments; Delta Mechanical determined how much
25 pay Plaintiff would receive per job; Delta Mechanical required Plaintiff to pick up
26 plumbing fixtures from Delta Mechanical's warehouse; Delta Mechanical required
27 Plaintiff to remain in his geographic area and be available to work until at least 2:00
28 p.m. each day; Delta Mechanical required Plaintiff to use Delta Mechanical forms for

1 submitting invoices; Delta Mechanical required Plaintiff to use Delta Mechanical forms
2 for obtaining customer approvals and customer satisfaction surveys; Delta Mechanical
3 did not hire Plaintiff for a specific number of jobs or particular length of time but could
4 terminate his services at will; and Delta Mechanical did not allow Plaintiff to perform
5 any kind of plumbing installation or delivery work for any other company.

6 **B. Defendants**

7 5. At all relevant times, Delta Mechanical, Inc. has been a corporation
8 organized under the law of the State of Arizona with a principal place of business in
9 Mesa, Arizona. On its website, Delta Mechanical boasts that "Delta Mechanical is the
10 largest plumbing company in the United States of America." Delta Mechanical does
11 business under different names in different states, including the names Arizona Delta
12 Mechanical, California Delta Mechanical, Florida Delta Mechanical, Georgia Delta
13 Mechanical, Las Vegas Delta Mechanical, Michigan Delta Mechanical, New Mexico
14 Delta Mechanical, and South Carolina Delta Mechanical. True and correct copies of
15 pages from Delta Mechanical's website describing the nature and scope of Delta
16 Mechanical's services are attached hereto as Exhibit 1. At all relevant times, California
17 Delta Mechanical, Inc. has been a corporation organized under the law of the State of
18 California with a principal place of business in Mesa, Arizona. Delta Mechanical is or
19 was the employer of Plaintiff and other similarly situated Installers at the time Delta
20 Mechanical breached its legal obligations to them as described herein.

21 6. Plaintiff is ignorant of the true name, capacity, relationship and extent of
22 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1
23 through 10, but is informed and believes and thereon allege that said Defendants are
24 legally responsible for the wrongful conduct alleged herein and therefore sue these
25 Defendants by such fictitious names. Plaintiff will amend this complaint to allege the
26 true names and capacities of the DOE Defendants when ascertained.

27 7. Plaintiff is informed and believes and thereon alleges that each Defendant
28 acted in all respects pertinent to this action as the agent of the other Defendants, carried

1 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts
2 of each Defendant are legally attributable to the other Defendants.

3 **FLSA COLLECTIVE ACTION ALLEGATIONS**

4 8. Plaintiff's claim for failure to pay overtime wages in violation of the FLSA
5 is brought as a collective action pursuant to 29 U.S.C. § 216(b) on behalf himself and
6 other Installers. For the purposes of this claim for relief, the term Installers is defined as
7 all persons who, at any time since the date three years before the filing of the complaint
8 in this action, were employed by Delta Mechanical anywhere in the United States as a
9 residential plumbing installer who would travel to the residence of a customer to deliver
10 and/or install a plumbing fixture.

11 9. At all relevant times, Plaintiff and other Installers have been similarly
12 situated in that they have had the same or substantially similar job duties and the same
13 or substantially similar terms and conditions of employment. At all relevant times,
14 Plaintiff and other Installers have been subject to Delta Mechanical's common practices,
15 policies, programs, procedures, protocols and/or plans which have resulted in the willful
16 failure by Delta Mechanical to properly classify Installers as "employees" instead of
17 "independent contractors" and its willful failure to pay Installers all the overtime wages
18 owed to them for all the overtime hours they worked in violation of the FLSA.

19 10. Although the names and addresses of other Installers are not yet known to
20 Plaintiff, they are readily ascertainable from the records maintained by Delta
21 Mechanical. Notice of this action and the right to "opt in" as a plaintiff for the purpose
22 of Plaintiff's collective action can be given to other Installers via first class mail at their
23 last known address known with Defendant.

24 11. Attached hereto as Exhibit 2 is the signed consent of Plaintiff to be a party
25 to the collective action brought by him under the FLSA. Plaintiff is informed and
26 believes and thereon alleges that, upon being given notice of their rights, many other
27 Installers will likewise consent to join as plaintiffs in the collective action brought by
28 Plaintiff against Delta Mechanical for violation of the FLSA.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings his state law claims on behalf of himself and all other similarly situated persons (collectively the "Class") as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The members of the Class belong to the California On Site Technicians Class, the Wage Statement Subclass and/or the Final Wages Subclass, which are defined as follows:

California Installers Class: All persons who, at any time since the date four years before the filing of the complaint in this action, were employed by Delta Mechanical anywhere in California as a residential plumbing installer who would travel to the residence of a customer to deliver and/or install a plumbing fixture.

Wage Statement Subclass: All persons who, at any time since the date one year before the filing of the complaint in this action, were employed by Delta Mechanical anywhere in California as a residential plumbing installer who would travel to the residence of a customer to deliver and/or install a plumbing fixture.

Final Wages Subclass: All persons who, at any time since the date three years before the filing of the complaint in this action, were employed by Delta Mechanical anywhere in California as a residential plumbing installer who would travel to the residence of a customer to deliver and/or install a plumbing fixture.

13. Plaintiff's state law claims are brought and may be maintained as a class action under Rule 23(a) of the Federal Rules of Civil Procedure.

a. Numerosity. The Class members are so numerous that individual joinder of all of them as plaintiffs is impractical. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are not less than 50 members in the California Installers Class, not less than 50 members in the Wage Statement Subclass, and not less than 50 members in the Final

1 Wages Subclass.

2 b. Commonality. There are questions of law or fact common to class
3 members. These common questions include, but are not limited to:

- 4 1) whether class members were employees or independent contractors; and
5 2) whether Delta Mechanical's failure to classify class members properly as
6 employees was knowing, intentional or "willful."

7 c. Typicality. Plaintiff is a member of the Class, and his claims are typical of
8 the claims of the other Class members Plaintiff seeks to represent. Plaintiff suffered the
9 same kinds of injuries suffered by other Class members and seeks the same kind of
10 relief sought by other Class members.

11 d. Adequate Representation. Plaintiff will adequately and fairly protect the
12 interests of the members of the Class. Plaintiff has no interests adverse to the interests
13 of absent Class members. Plaintiff is represented by legal counsel with substantial class
14 action experience in civil litigation and employment law.

15 14. This case is brought and may be maintained as a class action under Rule
16 23(b)(3) of the Federal Rules of Civil Procedure. Questions of law or fact common to
17 class members predominate over any questions affecting only individual members, and
18 a class action is superior to other available methods for the fair and efficient
19 adjudication of the controversy. Class action treatment will allow a large number of
20 similarly situated employees to prosecute their common claims in a single forum,
21 simultaneously, efficiently, and without the unnecessary duplication of effort and
22 expense that numerous individual actions would require. Further, the monetary amounts
23 due to many individual class members are likely to be relatively small, and the burden
24 and expense of individual litigation would make it difficult or impossible for individual
25 class members to seek and obtain relief. A class action will serve an important public
26 interest by permitting employees harmed by Defendants' unlawful practices to
27 effectively pursue recovery of the sums owed to them.

28 ///

FIRST CLAIM FOR RELIEF

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF FLSA

(By Plaintiff and Installers against Defendants)

15. Plaintiff incorporates paragraphs 1 through 11 of this complaint as if fully alleged herein.

16. At all relevant times, Delta Mechanical has been and/or continues to be an “employer” engaged in interstate commerce within the meaning of the FLSA, and Plaintiff and other Installers were “employees” within the meaning of the FLSA.

17. Pursuant to Section 7 of the FLSA, 29. U.S.C. § 207, Plaintiff and other Installers were entitled to receive overtimes wages at the rate of 1 and ½ times their regular rate of pay for all hours worked in excess of forty hours worked during a workweek.

18. In violation of the FLSA, Delta Mechanical failed to pay Plaintiff and other Installers all the overtime wages owed to them for all the overtime hours they worked every workweek. At all relevant times within the applicable limitations period, Delta Mechanical treated Installers as independent contractors and only paid them flat rates per job regardless of how many hours they actually worked.

19. As a result of Delta Mechanical’s unlawful conduct, Plaintiff and other Installers have suffered damages in an amount, subject to proof, to the extent they were not paid all the overtime wages owed to them for the overtime hours they worked.

20. Pursuant to 29 U.S.C. § 216(b), Plaintiff and other Installers are entitled to recover the full amount of unpaid overtime wages, prejudgment interest, liquidated damages, reasonable attorney’s fees and costs of suit.

SECOND CLAIM FOR RELIEF

FAILURE TO PAY MINIMUM WAGES

(By Plaintiff and the California Installers Class against Defendants)

21. Plaintiff incorporates paragraphs 1 through 7 and 12 through 14 of this complaint as if fully alleged herein.

22. At all relevant times, Plaintiff and the other members of the California Installers Class were employees of Delta Mechanical covered by Labor Code Section 1197.

23. Pursuant to Labor Code Section 1197, Plaintiff and the other members of the California Installers Class were entitled to minimum wages for every hour worked.

24. In violation of Labor Code Section 1197, Delta Mechanical failed to pay Plaintiff and other members of the California Installers Class all the minimum wages owed to them. During the limitations period applicable to this cause of action, Delta Mechanical treated Installers as independent contractors and only paid them flat rates per job regardless of how many hours they actually worked.

25. As a result of Delta Mechanical's unlawful conduct, Plaintiff and other members of the California Installers Class have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked.

26. Pursuant to Labor Code Section 1194, Plaintiff and other members of the California Installers Class are entitled to recover the full amount of their unpaid minimum wages, interest thereon, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 1194.2, Plaintiff and other members of the California Installers Class are also entitled to recover liquidated damages in an amount equal to the amount of unpaid minimum wages and interest thereon.

THIRD CLAIM FOR RELIEF

FAILURE TO PAY OVERTIME WAGES

(By Plaintiff and the California Installers Class against Defendants)

27. Plaintiff incorporates paragraphs 1 through 7, 12 through 14, and 21 through 26 of this complaint as if fully alleged herein.

28. At all relevant times, Plaintiff and the other members of the California Installers Class were employees of Delta Mechanical covered by Labor Code Section 510.

///

29. Pursuant to Labor Code Section 510, Plaintiff and the other members of the California Installers Class were entitled to overtime wages payable at the rate of at least one and one half times their regular rate of pay for all work in excess of eight hours in one workday or in excess of forty hours in one workweek, and at the rate of at least two times their regular rate of pay for all work in excess of twelve hours in one workday.

30. In violation of Labor Code Section 510, Delta Mechanical failed to pay Plaintiff and other members of the California Installers Class all amounts of overtime wages owed to them. At all relevant times within the applicable limitations period, Delta Mechanical treated Installers as independent contractors and only paid them flat rates per job regardless of how many hours they actually worked.

31. As a result of Delta Mechanical's unlawful conduct, Plaintiff and other members of the California Installers Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all overtime wages earned.

32. Pursuant to Labor Code Section 1194, Plaintiff and other members of the California On Site Technicians Class are entitled to recover the full amount of their unpaid overtime wages, interest thereon, reasonable attorney's fees and costs of suit.

FOURTH CLAIM FOR RELIEF

FAILURE TO PROVIDE MEAL PERIODS

(By Plaintiff and the California Installers against Defendants)

33. Plaintiff incorporates paragraphs 1 through 7 and 12 through 14 of this complaint as if fully alleged herein.

34. At all relevant times, Plaintiff and the other members of the California Installers Class were employees of Delta Mechanical covered by Labor Code Section 512, Labor Code Section 226.7 and applicable Wage Orders.

35. Pursuant to Labor Code Section 512, Labor Code Section 226.7 and/or applicable Wage Orders, Plaintiff and the other members of the California Installers Class were entitled to a duty free meal period on days they worked more than five hours and were entitled to premium wages equal to one hour of additional pay for every day a

1 required meal period was not provided.

2 36. In violation of Labor Code Section 512, Labor Code Section 226.7 and/or
3 applicable Wage Orders, Delta Mechanical failed to provide Plaintiff and other
4 members of the California Installers Class with meal periods and failed to pay Plaintiff
5 and other members of the California Installers Class premium wages owed for not
6 providing meal periods. At all relevant times within the applicable limitations period,
7 Delta Mechanical treated Installers as independent contractors who were not entitled to
8 duty free meal periods.

9 37. As a result of Delta Mechanical's unlawful conduct, Plaintiff and other
10 members of the California Installers Class have suffered damages in an amount, subject
11 to proof, to the extent they were not paid premium wages for unprovided meal periods.

12 38. Plaintiff and members of the California Installers Class are entitled to
13 recover reasonable attorney's fees in connection with their meal period claims pursuant
14 to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the
15 common fund doctrine.

16 **FIFTH CLAIM FOR RELIEF**

17 **FAILURE TO PROVIDE REST PERIODS**

18 **(By Plaintiff and the California Installers against Defendants)**

19 39. Plaintiff incorporates paragraphs 1 through 7 and 12 through 14 of this
20 complaint as if fully alleged herein.

21 40. At all relevant times, Plaintiff and the other members of the California
22 Installers Class were employees of Delta Mechanical covered by Labor Code Section
23 226.7 and applicable Wage Orders.

24 41. Pursuant to Labor Code Section 226.7 and applicable Wage Orders,
25 Plaintiff and the other members of the California Installers Class were entitled to rest
26 periods of 10 minutes for every four hour period of work and premium wages equal to
27 one hour of additional pay for every day a rest period was not provided.

28 ///

42. In violation of Labor Code Section 226.7 and/or applicable Wage Orders, Delta Mechanical failed to provide Plaintiff and other members of the California Installers Class with rest periods and failed to pay Plaintiff and other members of the California Installers Class premium wages for unprovided rest periods. At all relevant times within the applicable limitations period, Delta Mechanical treated Installers as independent contractors who were not entitled to rest periods.

43. As a result of Delta Mechanical's unlawful conduct, Plaintiff and other members of the California Installers Class have suffered damages in an amount, subject to proof, to the extent they were not paid premium wages for unprovided rest periods.

44. Plaintiff and members of the California Installers Class are entitled to recover reasonable attorney's fees in connection with their rest period claims pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

SIXTH CLAIM FOR RELIEF

FAILURE TO INDEMNIFY FOR BUSINESS EXPENSES

(By Plaintiff and the California Installers Class against Defendants)

45. Plaintiff incorporates paragraphs 1 through 7 and 12 through 14 of this complaint as if fully alleged herein.

46. At all relevant times, Plaintiff and other members of the California Installers Class were employees of Delta Mechanical covered by Labor Code Section 2802.

47. Pursuant to Labor Code Section 2802, Plaintiff and other members of the California Installers Class were entitled to indemnification for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties or obedience to the instructions of their employer, including all their work related mileage expenses for the gasoline needed to drive the truck Delta Mechanical required them to use for performing their jobs.

///

1 48. In violation of Labor Code Section 2802, Delta Mechanical failed to
2 indemnify Plaintiff and other members of the California Installers Class for all their
3 business expenses. At all relevant times within the limitations period applicable to this
4 cause of action, Delta Mechanical did not reimburse Installers for any of their work
5 related mileage expenses for the gasoline needed to drive the truck Delta Mechanical
6 required them to use for performing their jobs.

7 49. As a result of Delta Mechanical's unlawful conduct, Plaintiff and other
8 members of the California Installers Class have suffered damages in an amount, subject
9 to proof, to the extent Delta Mechanical failed to indemnify them for all their business
10 related expenses.

11 50. Pursuant to Labor Code Section 2802, Plaintiff and other members of the
12 California Installers Class are entitled to recover the amounts necessary to indemnify
13 them for all of their business expenses, reasonable attorney's fees and costs of suit.

14 **SEVENTH CLAIM FOR RELIEF**

15 **UNFAIR COMPETITION**

16 **(By Plaintiff and the California Installers Class Against Defendants)**

17 51. Plaintiff incorporates paragraphs 1 through 7, 12 through 14, and 21
18 through 50 of this complaint as if fully alleged herein.

19 52. The unlawful conduct of Delta Mechanical alleged herein constitutes unfair
20 competition within the meaning of Business and Professions Code Section 17200.

21 53. As a result of Defendant's unfair competition as alleged herein, Plaintiff
22 and other members of the California Installers Class have suffered injury in fact and lost
23 money or property. Plaintiff and members of the California Installers Class have been
24 deprived of their rights to payment of all minimum wages owed, payment of all
25 overtime wages owed, provision of meal periods, provision of rest periods, payment of
26 premium wages for unprovided meal periods and unprovided rest periods, and/or
27 indemnification for all business expenses; and Plaintiff and members of the California
28 Installers Class have not been paid all the monies owed to them under the Labor Code.

54. Pursuant to Business and Professions Code Section 17203, Plaintiff and other members of the California Installers Class are entitled to restitution of all wages or other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest, which Delta Mechanical failed to pay to them. Restitution of the money owed to Plaintiff and other members of the California Installers Class that Delta Mechanical wrongfully withheld and retained by means of engaging in unlawful business practices in violation of the Labor Code is necessary to prevent Delta Mechanical from becoming unjustly enriched by its failure to comply with the Labor Code.

55. Plaintiff and members of the California Installers Class are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CLAIM FOR RELIEF

FAILURE TO PROVIDE WAGE STATEMENTS

(By Plaintiff and the Wage Statement Subclass against Defendants)

56. Plaintiff incorporates paragraphs 1 through 7, 12 through 14, and 21 through 44 of this complaint as if fully alleged herein.

57. At all relevant times, Plaintiff and the other members of the Wage Statement Subclass were employees of Delta Mechanical covered by Labor Code Section 226.

58. Pursuant to Labor Code Section 226(a), Plaintiff and the other members of the Wage Statement Subclass were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement showing, *inter alia*, the total hours worked, all applicable hourly rates of pay, and the corresponding number of hours worked at each hourly rate.

59. In violation of Labor Code Section 226(a), Delta Mechanical failed to provide Plaintiff and other members of the Wage Statement Subclass any itemized wage

1 statements. At all relevant times within the applicable limitations period, Delta
2 Mechanical treated Installers as independent contractors who were not entitled to
3 receive itemized wage statements.

4 60. Delta Mechanical's failure to provide Plaintiff and other members of the
5 Wage Statement Subclass with itemized wage statements was knowing and intentional.
6 Delta Mechanical had the ability to provide Plaintiff and other members of the Wage
7 Statement Subclass with itemized wage statements but intentionally failed to provide
8 Installers with any wage statements.

9 61. As a result of Delta Mechanical's conduct, Plaintiff and other members of
10 the Wage Statement Subclass have suffered injury. The lack of wage statements renders
11 Installers unable to promptly and easily determine the total hours worked, all applicable
12 hourly rates of pay, and the corresponding number of hours worked at each hourly rate.

13 62. Pursuant to Labor Code Section 226(e), Plaintiff and other members of the
14 Wage Statement Subclass are entitled to recover fifty dollars for the initial pay period in
15 which a violation of Labor Code Section 226 occurred and one hundred dollars for each
16 violation of Labor Code Section 226 in every subsequent pay period, not to exceed an
17 aggregate civil penalty of four thousand dollars per employee.

18 63. Pursuant to Labor Code Sections 218, 226(e) and 226(g), Plaintiff and
19 other members of the Wage Statement Subclass are entitled to recover the full amount
20 of civil penalties due under Labor Code Section 226(e), reasonable attorney's fees and
21 costs of suit.

22 **NINTH CLAIM FOR RELIEF**

23 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

24 **(By Plaintiff and the Final Wages Subclass against Defendants)**

25 64. Plaintiff incorporates paragraphs 1 through 7, 12 through 14, and 21
26 through 44 of this complaint as if fully alleged herein.

27 65. At all relevant times, Plaintiff and the other members of the Final Wages
28 Subclass were employees of Delta Mechanical covered by Labor Code Sections 201 or

1 202.

2 66. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members
3 of the Final Wages Subclass were entitled upon termination to timely payment of all
4 wages earned and unpaid prior to termination. Discharged employees were entitled to
5 payment of all wages earned and unpaid prior to discharge immediately upon
6 termination. Employees who resigned were entitled to payment of all wages earned and
7 unpaid prior to resignation within 72 hours after giving notice of resignation or, if they
8 gave 72 hours previous notice, they were entitled to payment of all wages earned and
9 unpaid prior to resignation at the time of resignation.

10 67. In violation of Labor Code Sections 201 or 202, Delta Mechanical failed to
11 pay Plaintiff and other members of the Final Wages Subclass all wages earned and
12 unpaid prior to termination. At all relevant times within the applicable limitations
13 period, Delta Mechanical treated Installers as independent contractors and only paid
14 them flat rates per job regardless of how many hours they actually worked, and Delta
15 Mechanical, and Delta Mechanical did not provide Installers with meal periods or rest
16 periods or pay Installers premium wages for unprovided meal periods or rest periods.

17 68. Delta Mechanical's failure to pay Plaintiff and members of the Final
18 Wages Subclass all wages earned prior to termination in accordance with Labor Code
19 Sections 201 or 202 was willful. Delta Mechanical had the ability to pay all wages
20 earned by members of the Final Wages Subclass prior to termination in accordance with
21 Labor Code Sections 201 or 202, but intentionally adopted policies or practices
22 incompatible with the requirements of Labor Code Sections 201 or 202.

23 69. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members
24 of the Final Wages Subclass are entitled to all wages earned prior to termination that
25 Delta Mechanical failed to pay them.

26 70. Pursuant to Labor Code Section 203, Plaintiff and other members of the
27 Final Wages Subclass are entitled to penalty wages, from the day their earned and
28 unpaid wages were due upon termination until paid, up to a maximum of 30 days.

1 71. As a result of Delta Mechanical's unlawful conduct, Plaintiff and other
2 members of the Final Wages Subclass have suffered damages in an amount, subject to
3 proof, to the extent they were not paid for all wages earned prior to termination.

4 72. As a result of Delta Mechanical's unlawful conduct, Plaintiff and other
5 members of the Final Wages Subclass have suffered damages in an amount, subject to
6 proof, to the extent they were not paid all penalty wages owed under Labor Code
7 Section 203.

8 73. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other
9 members of the Final Wages Subclass are entitled to recover the full amount of their
10 unpaid wages, penalty wages under Labor Code Section 203, reasonable attorney's fees
11 and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a),
12 Plaintiff and other members of the Final Wages Subclass are entitled to recover
13 prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff on behalf of himself and all others similarly situated,
16 prays for relief and judgment against Defendants as follows:

- 17 A. An order certifying that Plaintiff may pursue their FLSA claims against
18 Defendants as a collective action on behalf of other Installers under 29
19 U.S.C. § 216(b).
- 20 B. An order certifying that Plaintiff may pursue his state law claims against
21 Defendants as a class action on behalf of the California Installers Class,
22 Wage Statement Subclass and Final Wages Subclass under Rule 23 of the
23 Federal Rules of Civil Procedure.
- 24 C. An order appointing Plaintiff as Class representative and appointing
25 Plaintiff's counsel as Class counsel.
- 26 D. Damages for unpaid overtime wages under 29 U.S.C. § 216(b).
- 27 E. Liquidated damages under 29 U.S.C. § 216(b).
- 28 F. Damages for unpaid minimum wages under Labor Code Section 1194.

- 1 G. Liquidated damages under Labor Code Section 1194.2.
- 2 H. Damages for unpaid overtime wages under Labor Code Section 1194.
- 3 I. Damages for unpaid premium wages under Labor Code Section 226.7.
- 4 J. Damages for unreimbursed business expenses under Labor Code Section
- 5 2802.
- 6 K. Restitution under Business and Professions Code Section 17203.
- 7 L. Civil penalties under Labor Code Section 226(e).
- 8 M. Damages for unpaid wages under Labor Code Sections 201 or 202.
- 9 N. Damages for unpaid penalty wages under Labor Code Section 203.
- 10 O. Pre-judgment interest.
- 11 P. Costs.
- 12 Q. Reasonable attorney's fees.
- 13 R. Such other and further relief as the Court deems just and proper.
- 14

15 Dated: August 9, 2013

KARASIK LAW FIRM
DYCHTER LAW OFFICES, APC

17 By: s/ Gregory N. Karasik
18 Gregory N. Karasik
19 Attorneys for Plaintiff
20 Email: greg@karasiklawfirm.com

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff demands a trial by jury for himself and all others similarly situated on all
23 claims so triable.

24 Dated: August 9, 2013

KARASIK LAW FIRM
DYCHTER LAW OFFICES, APC

26 By: s/ Gregory N. Karasik
27 Gregory N. Karasik
28 Attorneys for Plaintiff
Email: greg@karasiklawfirm.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DANIEL GOUNEV, individually and on behalf of others similarly situated

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gregory N. Karasik, Karasik Law Firm
11835 W. Olympic Boulevard, Suite 1275, Los Angeles, CA 90064
Tel. 310 312-6800

DEFENDANTS

DELTA MECHANICAL, Inc.; CALIFORNIA DELTA MECHANICAL, INC.; and DOES 1 through 10

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'13CV1857 JLS JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. Section 216 28-1331 (Vail)

Brief description of cause:

Collective action for unpaid overtime wages under FLSA and state law class action claims.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Aug 9 2013
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

APPLYING IFP

JUDGE

MAG. JUDGE